



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2014-0812; FRL-9958-82-Region 9]

#### **Approval of Air Quality State Implementation Plans; Nevada; Infrastructure Requirements to Address Interstate Transport for the 2008 Ozone NAAQS**

**AGENCY:** The Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the Nevada Division of Environmental Protection (NDEP) to address the interstate transport requirements of Clean Air Act (CAA) with respect to the 2008 ozone national ambient air quality standard (NAAQS). We are approving the portion of the Nevada SIP pertaining to requirements prohibiting significant contributions from Nevada to nonattainment or interference with maintenance in another state.

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2014-0812 for this action.

Generally, documents in the docket for this action are available electronically at

<http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901. While all documents in the docket are listed at

<http://www.regulations.gov>, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.*, confidential business information (CBI)). To inspect the hard

copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Tom Kelly, Air Planning Office (AIR-2), EPA, Region IX, (415) 972-3856, [kelly.thomasp@epa.gov](mailto:kelly.thomasp@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

## **TABLE OF CONTENTS:**

- I. Background
- II. Public Comments
- III. Final Action
- IV. Statutory and Executive Order Reviews

### **I. Background**

Sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements to implement, maintain and enforce the NAAQS no later than three years after the promulgation of a new or revised standard. Section 110(a)(2) outlines the specific requirements that each state is required to address in this SIP submission that collectively constitute the "infrastructure" of a state's air quality management program. A SIP submittal that addresses these requirements is referred to as an “infrastructure SIP” (I-SIP). In particular, CAA section 110(a)(2)(D)(i)(I) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will “contribute significantly to nonattainment” (“prong 1”) or “interfere with maintenance” (“prong 2”) of the applicable NAAQS in any other state. This action addresses the section 110(a)(2)(D)(i) requirements of prong 1 and prong 2 with respect to Nevada’s I-SIP submission.

On March 27, 2008, the EPA issued a revised NAAQS for ozone.<sup>1</sup> This action triggered a requirement for states to submit an I-SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the revised NAAQS. On April 10, 2013, NDEP submitted the “Nevada State Implementation Plan for the 2008 8-Hour Ozone NAAQS: Demonstration of Adequacy” (“2013 Submittal”) to address all of the CAA section 110(a)(2) requirements for the 2008 8-hour ozone NAAQS. On March 25, 2016, NDEP submitted, “2016 Supplement to the Nevada State Implementation Plan for the 2008 8-Hour Primary Ozone NAAQS: Clean Air Act Section 110(a)(2)(D)(i)(I)” (“2016 Supplement”).

On November 3, 2015, the EPA issued a partial approval and partial disapproval of Nevada’s 2013 I-SIP submittal for the 2008 ozone, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS, including the following actions on infrastructure SIP requirements: approval of SIP elements relating to CAA sections 110(a)(2)(A), (B), (C), (D)(i)(II) – visibility transport (“prong 4”), (E), (F), (G), (H), (I), (K), (L) and (M); partial approval, for Clark County, and partial disapproval, for Washoe County and the remainder of the state, of SIP elements relating to CAA sections 110(a)(2)(C), (D)(i)(II) - interference with Prevention of Significant Deterioration (“prong 3”), (D)(ii) (interstate pollution abatement and international air pollution) and (J); and, for NO<sub>x</sub> only, approval of SIP elements relating to prong 1 and prong 2 of CAA section 110(a)(2)(D)(i)(I).<sup>2</sup> Our November 3, 2015, partial approval and partial disapproval took no action on the Nevada 2013 Submittal with regard to prong 1 and prong 2 of the interstate transport requirements for the 2008 ozone NAAQS, but the proposal did state our intention to take action in a subsequent rulemaking. The EPA must take final action by February 13, 2017, on the provisions of the Nevada 2013 Submittal and 2016 Supplement addressing the

---

<sup>1</sup> National Ambient Air Quality Standards for Ozone; Final Rule, 73 FR 16436 (March 27, 2008).

<sup>2</sup> Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Nevada; Infrastructure Requirements for Ozone, NO<sub>2</sub> and SO<sub>2</sub>, 80 FR 67652 (November 3, 2015).

requirements of prong 1 and prong 2, pursuant to a judgment by the District of Nevada in Nevada vs. McCarthy.<sup>3</sup>

On December 6, 2016, the EPA proposed to approve the 2013 SIP Submittal and the 2016 Supplement addressing the infrastructure requirements of CAA section 110(a)(2)(D)(i) for the 2008 ozone NAAQS.<sup>4</sup> The rationale supporting the EPA's actions is explained in our proposal notice and the associated Technical Support Document (TSD) and will not be restated here. The proposed rule and TSD are available online at <http://www.regulations.gov>, Docket ID number EPA–R09–OAR–2014–0812.

## **II. Public Comments**

The EPA received no comments on the proposed action during the public comment period.

## **III. Final Action**

Under CAA section 110(k)(3), and based on the evaluation and rationale presented in the proposed rule, the related TSD, and this final rule, the EPA is approving Nevada's SIP as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) prong 1 and prong 2 for the 2008 ozone NAAQS.

## **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely

---

<sup>3</sup> See Judgment, Nevada v. McCarthy, Case 3:15-cv-00396-HDM-WGC (D. Nev. June 22, 2016).

<sup>4</sup> "Air Quality State Implementation Plans; Approvals and Promulgations: Nevada; Infrastructure Requirements to Address Interstate Transport for the 2008 Ozone NAAQS," 81 FR 87857 (December 6, 2016).

approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
  - does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
  - is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
  - does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
  - does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
  - is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
  - is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
  - is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
  - does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Approval and promulgation of implementation plans,  
Environmental protection, Incorporation by reference, Oxides of nitrogen, Ozone, and Volatile  
organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: January 13, 2017.

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart DD—Nevada**

2. In § 52.1470, paragraph (e), the table is amended by adding, under the heading “Air Quality Implementation Plan for the State of Nevada” an entry after the entry “Nevada's Clean Air Act § 110(a)(1) and (2) State Implementation Plan for the 2008 ozone NAAQS, excluding appendices A-F for NDEP; excluding the cover letter to NDEP and attachments A and B for Clark County; and excluding the cover letter to NDEP and Attachments A and B for Washoe County” to read as follows:

**§52.1470 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

**EPA-APPROVED NEVADA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES**

<b>Name of SIP provision</b>	<b>Applicable geographic or nonattainment area</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Explanation</b>
<b>AIR QUALITY IMPLEMENTATION PLAN FOR THE STATE OF NEVADA<sup>1</sup></b>				
* * * * *				



Supplement to the Nevada Division of Environmental Protection Portion of the Nevada “Infrastructure” SIP for the 2008 Ozone NAAQS: CAA § 110(a)(2)(D)(i)(I), Interstate Transport; excluding the cover letter to EPA Region 9 and attachments A and 2.	State-wide	3/25/2016	[ <u>Insert Federal Register citation</u>  ([ <u>Insert Federal Register publication date</u> ])	Interstate transport supplement to the “Infrastructure” SIP for NDEP, Clark County and Washoe County for the 2008 8-hour ozone standard.	
*	*	*	*	*	*

\* \* \* \* \*

<sup>1</sup> The organization of this table generally follows from the organization of the State of Nevada's original 1972 SIP, which was divided into 12 sections. Nonattainment and maintenance plans, among other types of plans, are listed under Section 5 (Control Strategy). Lead SIPs and Small Business Stationary Source Technical and Environmental Compliance Assistance SIPs are listed after Section 12 followed by nonregulatory or quasi-regulatory statutory provisions approved into the SIP. Regulatory statutory provisions are listed in 40 CFR 52.1470(c).

3. Section 52.1472 is amended by revising paragraph (h) to read as follows:

**§ 52.1472 Approval status.**

\* \* \* \* \*

(h) *2008 8-hour ozone NAAQS*: The SIPs submitted on December 20, 2012 are partially disapproved for CAA elements 110(a)(2)(C), (D)(ii), and (J) for the NDEP and Washoe County portions of the Nevada SIP.

\* \* \* \* \*

